

SENATE BILL No. 637

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-2-1-9; IC 5-2-5-14; IC 10-1-1-5; IC 10-1-3-2; IC 34-6-2-93; IC 34-24-5; IC 34-31-4-1; IC 34-31-4-3; IC 35-41-1-18.4; IC 35-42-2; IC 35-42-3-3; IC 35-43-1-2; IC 35-43-1-4; IC 35-43-2; IC 35-45-2-1; IC 35-45-2-2; IC 35-46-1-15.1; IC 35-50-2-9.

Synopsis: Hate crimes. Requires law enforcement agencies to collect information concerning crimes that are motivated by bias and to submit the information to the Indiana central repository for criminal history information. Requires the Indiana central repository for criminal history information to submit a compiled report of this information to each law enforcement agency. Requires the law enforcement training board and the superintendent of state police to include courses in identifying, responding to, and reporting offenses that are motivated by bias in the training programs that law enforcement officers are required to take. Allows a person to bring a civil action to recover actual, consequential, or incidental damages, including damages for emotional
(Continued next page)

Effective: July 1, 1999.

Bowser

January 22, 1999, read first time and referred to Committee on Judiciary.



distress, resulting from a crime motivated by bias. Provides that a parent with custody of a child is liable for the full amount of a judgment imposed against the child for a bias motivated crime or institutional criminal mischief. Expands the scope of the crime of institutional criminal mischief to include structures that are used for a religious purpose other than worship and educational facilities that do not qualify as a school. Defines "motivated by bias" as conduct that is apparently directed at an individual or a group because of the actual or perceived race, color, religion, national origin, sexual orientation, or gender of the individual or group. Increases the penalty of various Class D felonies and misdemeanors, including battery, criminal recklessness, provocation, computer tampering, criminal confinement, residential entry, criminal trespass, computer trespass, intimidation, harassment, and invasion of privacy, when the offense is motivated by bias. Specifies that a court may impose the death penalty or life without parole for a murder that is motivated by bias.

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Introduced

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

SENATE BILL No. 637

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-2-1-9 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 1999]: Sec. 9. (a) The board shall adopt in
3 accordance with IC 4-22-2 all necessary rules to carry out the
4 provisions of this chapter. Such rules, which shall be adopted only after
5 necessary and proper investigation and inquiry by the board, shall
6 include the establishment of the following:
7 (1) Minimum standards of physical, educational, mental, and
8 moral fitness which shall govern the acceptance of any person for
9 training by any law enforcement training school or academy
10 meeting or exceeding the minimum standards established
11 pursuant to this chapter.
12 (2) Minimum standards for law enforcement training schools
13 administered by towns, cities, counties, the northwest Indiana law
14 enforcement training center, agencies, or departments of the state.
15 (3) Minimum standards for courses of study, attendance



requirements, equipment, and facilities for approved town, city, county, and state law enforcement officer, police reserve officer, and conservation reserve officer training schools.

(4) Minimum qualifications for instructors at approved law enforcement training schools.

(5) Minimum basic training requirements which law enforcement officers appointed to probationary terms shall complete before being eligible for continued or permanent employment.

(6) Minimum basic training requirements which law enforcement officers not appointed for probationary terms but appointed on other than a permanent basis shall complete in order to be eligible for continued employment or permanent appointment.

(7) Minimum basic training requirements which law enforcement officers appointed on a permanent basis shall complete in order to be eligible for continued employment.

(b) Except as provided in subsection (l), a law enforcement officer appointed after July 5, 1972, and before July 1, 1993, may not enforce the laws or ordinances of the state or any political subdivision unless the officer has, within one (1) year from the date of appointment, successfully completed the minimum basic training requirements established under this chapter by the board. If a person fails to successfully complete the basic training requirements within one (1) year from the date of employment, the officer may not perform any of the duties of a law enforcement officer involving control or direction of members of the public or exercising the power of arrest until the officer has successfully completed the training requirements. This subsection does not apply to any law enforcement officer appointed before July 6, 1972, or after June 30, 1993.

(c) Military leave or other authorized leave of absence from law enforcement duty during the first year of employment after July 6, 1972, shall toll the running of the first year, which in such cases shall be calculated by the aggregate of the time before and after the leave, for the purposes of this chapter.

(d) Except as provided in subsections (e) and (l), a law enforcement officer appointed to a law enforcement department or agency after June 30, 1993, may not:

- (1) make an arrest;
- (2) conduct a search or a seizure of a person or property; or
- (3) carry a firearm;

unless the law enforcement officer successfully completes, at a board certified law enforcement academy or at the northwest Indiana law enforcement training center under section 15.2 of this chapter, the basic



1 training requirements established by the board under this chapter.

2 (e) Before a law enforcement officer appointed after June 30, 1993,
3 completes the basic training requirements, the law enforcement officer
4 may exercise the police powers described in subsection (d) if the
5 officer successfully completes the pre-basic course established in
6 subsection (f). Successful completion of the pre-basic course authorizes
7 a law enforcement officer to exercise the police powers described in
8 subsection (d) for one (1) year after the date the law enforcement
9 officer is appointed.

10 (f) The board shall adopt rules under IC 4-22-2 to establish a
11 pre-basic course for the purpose of training:

12 (1) law enforcement officers;

13 (2) police reserve officers (as described in IC 36-8-3-20); and

14 (3) conservation reserve officers (as described in IC 14-9-8-27);

15 regarding the subjects of arrest, search and seizure, use of force, and
16 firearm qualification. The pre-basic course must be offered on a
17 periodic basis throughout the year at regional sites statewide. The
18 pre-basic course must consist of forty (40) hours of course work. The
19 board may prepare a pre-basic course on videotape that must be used
20 in conjunction with live instruction. The board shall provide the course
21 material, the instructors, and the facilities at the regional sites
22 throughout the state that are used for the pre-basic course. In addition,
23 the board may certify pre-basic courses that may be conducted by other
24 public or private training entities, including colleges and universities.

25 (g) The board shall adopt rules under IC 4-22-2 to establish a
26 mandatory inservice training program for police officers. After June 30,
27 1993, a law enforcement officer who has satisfactorily completed the
28 basic training and has been appointed to a law enforcement department
29 or agency on either a full-time or part-time basis is not eligible for
30 continued employment unless the officer satisfactorily completes a
31 minimum of sixteen (16) hours each year of inservice training in any
32 subject area included in the law enforcement academy's basic training
33 course or other job related subjects that are approved by the board as
34 determined by the law enforcement department's or agency's needs. In
35 addition, a certified academy staff may develop and make available
36 inservice training programs on a regional or local basis. The board may
37 approve courses offered by other public or private training entities,
38 including colleges and universities, as necessary in order to ensure the
39 availability of an adequate number of inservice training programs. The
40 board may waive an officer's inservice training requirements if the
41 board determines that the officer's reason for lacking the required
42 amount of inservice training hours is due to any of the following:



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(1) An emergency situation.

(2) The unavailability of courses.

(h) The board shall also adopt rules establishing a town marshal basic training program, subject to the following:

(1) The program must require fewer hours of instruction and class attendance and fewer courses of study than are required for the mandated basic training program.

(2) Certain parts of the course materials may be studied by a candidate at the candidate's home in order to fulfill requirements of the program.

(3) Law enforcement officers successfully completing the requirements of the program are eligible for appointment only in towns employing the town marshal system (IC 36-5-7) and having no more than one (1) marshal and two (2) deputies.

(4) The limitation imposed by subdivision (3) does not apply to an officer who has successfully completed the mandated basic training program.

(5) The time limitations imposed by subsections (b) and (c) for completing the training are also applicable to the town marshal basic training program.

(i) The board shall adopt rules under IC 4-22-2 to establish a police chief executive training program. The program must include training in the following areas:

(1) Liability.

(2) Media relations.

(3) Accounting and administration.

(4) Discipline.

(5) Department policy making.

(6) Firearm policies.

(7) Department programs.

(j) A police chief shall apply for admission to the police chief executive training program within two (2) months of the date the police chief initially takes office. A police chief must successfully complete the police chief executive training program within six (6) months of the date the police chief initially takes office. However, if space in the program is not available at a time that will allow the police chief to complete the program within six (6) months of the date the police chief initially takes office, the police chief must successfully complete the next available program that is offered to the police chief after the police chief initially takes office.

(k) A police chief who fails to comply with subsection (j) may not serve as the police chief until the police chief has completed the police



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chief executive training program. For the purposes of this subsection and subsection (j), "police chief" refers to:

- (1) the police chief of any city; and
- (2) the police chief of any town having a metropolitan police department.

A town marshal is not considered to be a police chief for these purposes, but a town marshal may enroll in the police chief executive training program.

(l) An investigator in the arson division of the office of the state fire marshal appointed:

- (1) before January 1, 1994, is not required; or
- (2) after December 31, 1993, is required;

to comply with the basic training standards established under this section.

(m) This subsection applies to the following:

- (1) Minimum basic training program required under subsection (d).**
- (2) Mandatory inservice training program required under subsection (g).**
- (3) Town marshal basic training program required under subsection (h).**
- (4) Police chief executive training program required under subsection (j).**
- (5) Any other training program for which the board adopts standards.**

After December 31, 1999, the standards adopted by the board for each program described in this subsection must include requirements for mandatory training in identifying, responding to, and reporting institutional criminal mischief under IC 35-43-1-2 and offenses that are motivated by bias (as defined in IC 35-41-1-18.4).

SECTION 2. IC 5-2-5-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 14. (a) After December 31, 1999, each law enforcement agency shall collect information concerning institutional criminal mischief under IC 35-43-1-2 and offenses that are motivated by bias (as defined in IC 35-41-1-18.4).**

(b) At least two (2) times each year, each law enforcement agency shall submit information collected under subsection (a) to the Indiana central repository for criminal history information.

(c) At least one (1) time each year, the Indiana central repository for criminal history information shall submit a report



that includes a compilation of information obtained under subsection (b) to each law enforcement agency, the governor, and the executive director of the legislative services agency.

(d) Information collected, submitted, and reported under this section must be consistent with guidelines established for the acquisition, preservation, and exchange of identification records and information by:

(1) the Attorney General of the United States; or

(2) the Federal Bureau of Investigation under 28 U.S.C. 534.

SECTION 3. IC 10-1-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. The superintendent, with the approval of the board, is authorized and hereby directed to organize and maintain a training school for police employees of the department. No police employee shall be assigned to regular active duty until he shall have received training and successfully passed the course for probationers prescribed by the superintendent. Training courses, other than **those** for probationers, shall be prescribed and conducted by the superintendent for all police employees of the department. **After December 31, 1999:**

(1) the course for probationers; and

(2) training courses for employees other than probationers; **must include requirements for mandatory training in identifying, responding to, and reporting institutional criminal mischief under IC 35-43-1-2 and offenses that are motivated by bias (as defined in IC 35-41-1-18.4).**

SECTION 4. IC 10-1-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. The courses of training programs shall be conducted under the supervision of and at the direction of the superintendent of state police. The programs shall include courses of instruction in:

(1) detection, pursuit, apprehension, and conviction of criminals; **as well as**

(2) safety instruction and first aid assistance; **together with**

(3) **after December 31, 1999, identifying, responding to, and reporting institutional criminal mischief under IC 35-43-1-2 and offenses that are motivated by bias (as defined in IC 35-41-1-18.4); and**

(4) such other subjects deemed appropriate by the superintendent.

SECTION 5. IC 34-6-2-93 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 93. (a) "Parents", for purposes of IC 34-28-3 **and IC 34-31-4-3**, means:

(1) the child's birth mother and father who:



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- 1 (A) is listed as the father on the birth certificate;
- 2 (B) is presumed by law under IC 31-14-7 to be the child's
- 3 father; or
- 4 (C) has established paternity with a court order;
- 5 (2) in the case of adoption, the adopting father and mother of a
- 6 child;
- 7 (3) where custody of a child has been awarded in a court
- 8 proceeding to someone other than the mother or father, the court
- 9 appointed guardian or custodian of the child;
- 10 (4) where the child's parents are divorced, the parent to whom the
- 11 divorce decree or modification awards physical custody or control
- 12 of the child; or
- 13 (5) if the child's parents are living apart, the parent to whom
- 14 physical custody or control of the child has been awarded by a
- 15 court order.

16 (b) The term does not include a natural or adopting parent who has
 17 given written consent for the child to be adopted by another (if the
 18 child has been adopted by another), nor does the term include a child's
 19 parent who has lost custody of the child under subsection (a)(3), (a)(4),
 20 or (a)(5).

21 SECTION 6. IC 34-24-5 IS ADDED TO THE INDIANA CODE AS
 22 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 23 1, 1999]:

24 **Chapter 5. Civil Action for Victims of Institutional Criminal**
 25 **Mischief or Bias Crimes**

26 **Sec. 1. This chapter applies only to an offense that is committed**
 27 **after June 30, 1999.**

28 **Sec. 2. A person is liable for damages resulting from conduct**
 29 **that is:**

- 30 (1) institutional criminal mischief under IC 35-43-1-2; or
- 31 (2) another criminal offense, if it is motivated by bias (as
- 32 defined in IC 35-41-1-18.4).

33 **Sec. 3. In an action brought under section 2 of this chapter, the**
 34 **person that suffered damages may seek to recover the following:**

- 35 (1) Actual, consequential, or incidental damages, including
- 36 damages for emotional distress.
- 37 (2) The costs of the action.
- 38 (3) Reasonable attorney's fees.
- 39 (4) Punitive damages.
- 40 (5) Any other appropriate relief.

41 **However, the person that suffered damages may not recover**
 42 **damages or attorney's fees under this chapter and IC 34-24-3 for**



1 **the same conduct.**

2 SECTION 7. IC 34-31-4-1 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. Except as provided
4 in ~~section 2~~ **sections 2 and 3** of this chapter, a parent is liable for not
5 more than five thousand dollars (\$5,000) in actual damages arising
6 from harm to a person or damage to property knowingly, intentionally,
7 or recklessly caused by the parent's child if:

- 8 (1) the parent has custody of the child; and
9 (2) the child is living with the parent.

10 SECTION 8. IC 34-31-4-3 IS ADDED TO THE INDIANA CODE
11 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
12 1, 1999]: **Sec. 3. A parent, including a court appointed guardian or**
13 **custodian, is liable for the full amount of a judgment entered under**
14 **IC 34-24-5-2 against the child if:**

- 15 (1) **the parent has custody of the child; and**
16 (2) **the child is living with the parent.**

17 SECTION 9. IC 35-41-1-18.4 IS ADDED TO THE INDIANA
18 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
19 [EFFECTIVE JULY 1, 1999]: **Sec. 18.4. "Motivated by bias" means**
20 **conduct that is apparently directed at an individual or a group**
21 **because of the actual or perceived race, color, religion, national**
22 **origin, sexual orientation, or gender of the individual or group.**

23 SECTION 10. IC 35-42-2-1 IS AMENDED TO READ AS
24 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) A person who
25 knowingly or intentionally touches another person in a rude, insolent,
26 or angry manner commits battery, a Class B misdemeanor. However,
27 the offense is:

- 28 (1) a Class A misdemeanor if:
29 (A) it results in bodily injury to any other person;
30 (B) it is committed against a law enforcement officer or
31 against a person summoned and directed by the officer while
32 the officer is engaged in the execution of his official duty; ~~or~~
33 (C) it is committed against an employee of a penal facility or
34 a juvenile detention facility (as defined in IC 31-9-2-71) while
35 the employee is engaged in the execution of the employee's
36 official duty; **or**
37 **(D) it is motivated by bias;**
38 (2) a Class D felony if it results in bodily injury to:
39 (A) a law enforcement officer or a person summoned and
40 directed by a law enforcement officer while the officer is
41 engaged in the execution of his official duty;
42 (B) a person less than fourteen (14) years of age and is



- 1 committed by a person at least eighteen (18) years of age;
 2 (C) a person of any age who is mentally or physically disabled
 3 and is committed by a person having the care of the mentally
 4 or physically disabled person, whether the care is assumed
 5 voluntarily or because of a legal obligation;
 6 (D) the other person and the person who commits the battery
 7 was previously convicted of a battery in which the victim was
 8 the other person;
 9 (E) the other person and the person who commits the battery
 10 which was related to domestic violence (as defined in
 11 IC 31-9-2-42) was previously convicted of a battery which was
 12 related to domestic violence;
 13 (F) an endangered adult (as defined by IC 35-46-1-1);
 14 (G) an employee of the department of correction while the
 15 employee is engaged in the execution of the employee's
 16 official duty;
 17 (H) an employee of a school corporation while the employee
 18 is engaged in the execution of the employee's official duty and
 19 the employee is:
 20 (i) on school property;
 21 (ii) within one thousand (1,000) feet of school property; or
 22 (iii) on a school bus;
 23 (I) a correctional professional while the correctional
 24 professional is engaged in the execution of the correctional
 25 professional's official duty;
 26 (J) a person who is a health care provider (as defined in
 27 IC 16-18-2-163) while the health care provider is engaged in
 28 the execution of the health care provider's official duty; or
 29 (K) an employee of a penal facility or a juvenile detention
 30 facility (as defined in IC 31-9-2-71) while the employee is
 31 engaged in the execution of the employee's official duty;
 32 (3) a Class C felony if it results in serious bodily injury to any
 33 other person or if it is committed by means of a deadly weapon;
 34 and
 35 (4) a Class B felony if it results in serious bodily injury to a
 36 person less than fourteen (14) years of age and is committed by a
 37 person at least eighteen (18) years of age.
 38 (b) For purposes of this section:
 39 (1) "law enforcement officer" includes an alcoholic beverage
 40 enforcement officer; and
 41 (2) "correctional professional" means a:
 42 (A) probation officer;

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- (B) parole officer;
- (C) community corrections worker; or
- (D) home detention officer.

SECTION 11. IC 35-42-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) As used in this section, "hazing" means forcing or requiring another person:

- (1) with or without the consent of the other person; and
- (2) as a condition of association with a group or organization; to perform an act that creates a substantial risk of bodily injury.
- (b) A person who recklessly, knowingly, or intentionally performs:
 - (1) an act that creates a substantial risk of bodily injury to another person; or
 - (2) hazing;

commits criminal recklessness, a Class B misdemeanor. However, the offense is a:

- (1) ~~(A)~~ Class A misdemeanor if the conduct includes the use of a vehicle **or is motivated by bias**;
- (2) ~~(B)~~ Class D felony if it is committed while armed with a deadly weapon; or
- (3) ~~(C)~~ Class C felony if it is committed by shooting a firearm from a vehicle into an inhabited dwelling or other building or place where people are likely to gather.

(c) A person who recklessly, knowingly, or intentionally:

- (1) inflicts serious bodily injury on another person; or
- (2) performs hazing that results in serious bodily injury to a person;

commits criminal recklessness, a Class D felony. However, the offense is a Class C felony if committed by means of a deadly weapon.

(d) A person, other than a person who has committed an offense under this section or a delinquent act that would be an offense under this section if the violator was an adult, who:

- (1) makes a report of hazing in good faith;
- (2) participates in good faith in a judicial proceeding resulting from a report of hazing;
- (3) employs a reporting or participating person described in subdivision (1) or (2); or
- (4) supervises a reporting or participating person described in subdivision (1) or (2);

is not liable for civil damages or criminal penalties that might otherwise be imposed because of the report or participation.

(e) A person described in subsection (d)(1) or (d)(2) is presumed to act in good faith.



(f) A person described in subsection (d)(1) or (d)(2) may not be treated as acting in bad faith solely because the person did not have probable cause to believe that a person committed:

- (1) an offense under this section; or
- (2) a delinquent act that would be an offense under this section if the offender was an adult.

SECTION 12. IC 35-42-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. A person who recklessly, knowingly, or intentionally engages in conduct that is likely to provoke a reasonable man to commit battery commits provocation, a Class C infraction. **However, the conduct is a Class C misdemeanor if it is motivated by bias.**

SECTION 13. IC 35-42-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. (a) A person who knowingly or intentionally:

- (1) confines another person without the other person's consent; or
 - (2) removes another person, by fraud, enticement, force, or threat of force, from one (1) place to another;
- commits criminal confinement, a Class D felony.

(b) However, the offense is a:

(1) Class C felony if:

(A) the other person is less than fourteen (14) years of age and is not the person's child; **or**

(B) **it is motivated by bias**; and a

(2) Class B felony if it is committed while armed with a deadly weapon or results in serious bodily injury to another person.

SECTION 14. IC 35-43-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) A person who:

- (1) recklessly, knowingly, or intentionally damages or defaces property of another person without the other person's consent; or
- (2) knowingly or intentionally causes another to suffer pecuniary loss by deception or by an expression of intention to injure another person or to damage the property or to impair the rights of another person;

commits criminal mischief, a Class B misdemeanor. However, the offense is:

(A) a Class A misdemeanor if:

- (i) the pecuniary loss is at least two hundred fifty dollars (\$250) but less than two thousand five hundred dollars (\$2,500);
- (ii) the property damaged was a moving motor vehicle;
- (iii) the property damaged was a car or equipment of a



1 railroad company being operated on a railroad right-of-way;
 2 or

3 (iv) the property damage or defacement was caused by paint
 4 or other markings; and

5 (B) a Class D felony if:

6 (i) the pecuniary loss is at least two thousand five hundred
 7 dollars (\$2,500);

8 (ii) the damage causes a substantial interruption or
 9 impairment of utility service rendered to the public;

10 (iii) the damage is to a public record;

11 (iv) the damage causes substantial interruption or
 12 impairment of work conducted in a scientific research
 13 facility; or

14 (v) the damage is to a law enforcement animal (as defined in
 15 IC 35-46-3-4.5).

16 (b) A person who recklessly, knowingly, or intentionally damages:

17 (1) a structure used for religious worship **or other religious**
 18 **purposes;**

19 (2) a cemetery or a facility used for memorializing the dead;

20 (3) a school, **educational facility**, or community center;

21 (4) the grounds:

22 (A) adjacent to; and

23 (B) owned or rented in common with;

24 a structure or facility identified in subdivision (1), (2), or (3); or

25 (5) personal property contained in a structure or located at a
 26 facility identified in subdivision (1), (2), or (3);

27 without the consent of the owner, possessor, or occupant of the
 28 property that is damaged, commits institutional criminal mischief, a
 29 Class A misdemeanor. However, the offense is a Class D felony if the
 30 pecuniary loss is at least two hundred fifty dollars (\$250) but less than
 31 two thousand five hundred dollars (\$2,500), and a Class C felony if the
 32 pecuniary loss is at least two thousand five hundred dollars (\$2,500).

33 (c) If a person is convicted of an offense under this section that
 34 involves the use of graffiti, the court may, in addition to any other
 35 penalty, order that the person's operator's license be suspended or
 36 invalidated by the bureau of motor vehicles for not more than one (1)
 37 year.

38 (d) The court may rescind an order for suspension or invalidation
 39 under subsection (c) and allow the person to receive a license or permit
 40 before the period of suspension or invalidation ends if the court
 41 determines that:

42 (1) the person has removed or painted over the graffiti or has



1 made other suitable restitution; and

2 (2) the person who owns the property damaged or defaced by the
3 criminal mischief or institutional criminal mischief is satisfied
4 with the removal, painting, or other restitution performed by the
5 person.

6 SECTION 15. IC 35-43-1-4 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) As used in this
8 section:

9 "Computer network" and "computer system" have the meanings set
10 forth in IC 35-43-2-3.

11 "Computer program" means an ordered set of instructions or
12 statements that, when executed by a computer, causes the computer to
13 process data.

14 "Data" means a representation of information, facts, knowledge,
15 concepts, or instructions that:

16 (1) may take any form, including computer printouts, magnetic
17 storage media, punched cards, or stored memory;

18 (2) has been prepared or is being prepared; and

19 (3) has been processed, is being processed, or will be processed;
20 in a computer system or computer network.

21 (b) A person who knowingly or intentionally alters or damages a
22 computer program or data, which comprises a part of a computer
23 system or computer network without the consent of the owner of the
24 computer system or computer network commits computer tampering,
25 a Class D felony. **However, the offense is a Class C felony if it is**
26 **motivated by bias.**

27 SECTION 16. IC 35-43-2-1.5 IS AMENDED TO READ AS
28 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1.5. A person who
29 knowingly or intentionally breaks and enters the dwelling of another
30 person commits residential entry, a Class D felony. **However, the**
31 **offense is a Class C felony if it is motivated by bias.**

32 SECTION 17. IC 35-43-2-2 IS AMENDED TO READ AS
33 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) A person who:

34 (1) not having a contractual interest in the property, knowingly or
35 intentionally enters the real property of another person after
36 having been denied entry by the other person or that person's
37 agent;

38 (2) not having a contractual interest in the property, knowingly or
39 intentionally refuses to leave the real property of another person
40 after having been asked to leave by the other person or that
41 person's agent;

42 (3) accompanies another person in a vehicle, with knowledge that

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the other person knowingly or intentionally is exerting unauthorized control over the vehicle;

(4) knowingly or intentionally interferes with the possession or use of the property of another person without the person's consent; or

(5) not having a contractual interest in the property, knowingly or intentionally enters the dwelling of another person without the person's consent;

commits criminal trespass, a Class A misdemeanor.

(b) However, the offense is a Class D felony if it is:

(1) committed on a scientific research facility, on school property, or on a school bus or the person has a prior unrelated conviction for an offense under this section concerning the same property; or

(2) motivated by bias.

~~(b)~~ **(c)** A person has been denied entry under subdivision (a)(1) of this section when the person has been denied entry by means of:

(1) personal communication, oral or written; or

(2) posting or exhibiting a notice at the main entrance in a manner that is either prescribed by law or likely to come to the attention of the public.

SECTION 18. IC 35-43-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. (a) As used in this section:

"Access" means to:

(1) approach;

(2) instruct;

(3) communicate with;

(4) store data in;

(5) retrieve data from; or

(6) make use of resources of;

a computer, computer system, or computer network.

"Computer network" means the interconnection of communication lines with a computer through remote terminals or a complex consisting of two (2) or more interconnected computers.

"Computer system" means a set of related computer equipment, software, or hardware.

(b) A person who knowingly or intentionally accesses:

(1) a computer system;

(2) a computer network; or

(3) any part of a computer system or computer network;

without the consent of the owner of the computer system or computer

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1 network, or the consent of the owner's licensee, commits computer
 2 trespass, a Class A misdemeanor. **However, the offense is a Class D**
 3 **felony if it is motivated by bias.**

4 SECTION 19. IC 35-45-2-1 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) A person who
 6 communicates a threat to another person, with the intent that:

- 7 (1) the other person engage in conduct against his will; or
 8 (2) the other person be placed in fear of retaliation for a prior
 9 lawful act;

10 commits intimidation, a Class A misdemeanor.

11 (b) However, the offense is a:

12 (1) Class D felony if:

13 (A) the threat is to commit a forcible felony;

14 (B) the person to whom the threat is communicated:

15 (i) is a law enforcement officer;

16 (ii) is a judge or bailiff of any court;

17 (iii) is a witness (or the spouse or child of a witness) in any
 18 pending criminal proceeding against the person making the
 19 threat; or

20 (iv) is an employee of a school corporation; ~~or~~

21 (C) the person has a prior unrelated conviction for an offense
 22 under this section concerning the same victim; **or**

23 **(D) the threat is motivated by bias; and**

24 (2) Class C felony if, while committing it, the person draws or
 25 uses a deadly weapon.

26 (c) "Threat" means an expression, by words or action, of an
 27 intention to:

28 (1) unlawfully injure the person threatened or another person, or
 29 damage property;

30 (2) unlawfully subject a person to physical confinement or
 31 restraint;

32 (3) commit a crime;

33 (4) unlawfully withhold official action, or cause such withholding;

34 (5) unlawfully withhold testimony or information with respect to
 35 another person's legal claim or defense, except for a reasonable
 36 claim for witness fees or expenses;

37 (6) expose the person threatened to hatred, contempt, disgrace, or
 38 ridicule; or

39 (7) falsely harm the credit or business reputation of the person
 40 threatened.

41 SECTION 20. IC 35-45-2-2 IS AMENDED TO READ AS
 42 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) A person who,



with intent to harass, annoy, or alarm another person but with no intent of legitimate communication:

- (1) makes a telephone call, whether or not a conversation ensues;
- (2) communicates with a person by telegraph, mail, or other form of written communication;
- (3) transmits an obscene message, or indecent or profane words, on a Citizens Radio Service channel; or
- (4) uses a computer network (as defined in IC 35-43-2-3(a)) or other form of electronic communication to:
 - (A) communicate with a person; or
 - (B) transmit an obscene message or indecent or profane words to a person;

commits harassment, a Class B misdemeanor. **However, the offense is a Class A misdemeanor if it is motivated by bias.**

(b) A message is obscene if:

- (1) the average person, applying contemporary community standards, finds that the dominant theme of the message, taken as a whole, appeals to the prurient interest in sex;
- (2) the message refers to sexual conduct in a patently offensive way; and
- (3) the message, taken as a whole, lacks serious artistic, literary, political, or scientific value.

SECTION 21. IC 35-46-1-15.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 15.1. (a) A person who knowingly or intentionally violates:

(1) a protective order issued under:

- (A) IC 34-26-2-12(1)(A) (or IC 34-4-5.1-5(a)(1)(A) before its repeal);
- (B) IC 34-26-2-12(1)(B) (or IC 34-4-5.1-5(a)(1)(B) before its repeal); or
- (C) IC 34-26-2-12(1)(C) (or IC 34-4-5.1-5(a)(1)(C) before its repeal);

that orders the respondent to refrain from abusing, harassing, or disturbing the peace of the petitioner;

(2) an emergency protective order issued under IC 34-26-2-6(1), IC 34-26-2-6(2), IC 34-26-2-6(3), (or IC 34-4-5.1-2.3(a)(1)(A), IC 34-4-5.1-2.3(a)(1)(B), or IC 34-4-5.1-2.3(a)(1)(C) before their repeal) that orders the respondent to refrain from abusing, harassing, or disturbing the peace of the petitioner;

(3) a temporary restraining order issued under IC 31-15-4-3(2), IC 31-15-4-3(3), IC 31-16-4-2(a)(2), or IC 31-16-4-2(a)(3) (or IC 31-1-11.5-7(b)(2) or IC 31-1-11.5-7(b)(3) before their repeal)



that orders the respondent to refrain from abusing, harassing, or disturbing the peace of the petitioner;

(4) an order in a dispositional decree issued under IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-19-5 (or IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an order issued under IC 31-32-13 (or IC 31-6-7-14 before its repeal) that orders the person to refrain from direct or indirect contact with a child in need of services or a delinquent child;

(5) an order issued as a condition of pretrial release or pretrial diversion that orders the person to refrain from any direct or indirect contact with another person;

(6) an order issued as a condition of probation that orders the person to refrain from any direct or indirect contact with another person;

(7) a protective order issued under IC 31-15-5 or IC 31-16-5 (or IC 31-1-11.5-8.2 before its repeal) that orders the respondent to refrain from abusing, harassing, or disturbing the peace of the petitioner;

(8) a protective order issued under IC 31-14-16 in a paternity action;

(9) a protective order issued under IC 31-34-17 in a child in need of services proceeding or under IC 31-37-16 in a juvenile delinquency proceeding that orders the respondent to refrain from having direct or indirect contact with a child; or

(10) an order issued in a state other than Indiana that is substantially similar to an order described in subdivisions (1) through (9);

commits invasion of privacy, a Class B misdemeanor. However, the offense is a Class A misdemeanor if the person has a prior unrelated conviction for an offense under this section **or the offense is motivated by bias.**

(b) In addition to any other penalty imposed for conviction of a Class A misdemeanor under this section, if the violation of the protective order results in bodily injury to the petitioner, the court shall order the defendant to be imprisoned for five (5) days. A five (5) day sentence under this subsection may not be suspended. The court may require the defendant to serve the five (5) day term of imprisonment in an appropriate facility at whatever time or intervals, consecutive or intermittent, the court determines to be appropriate. However:

(1) at least forty-eight (48) hours of the sentence must be served consecutively; and

(2) the entire five (5) day sentence must be served within six (6)



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months after the date of sentencing.

(c) Notwithstanding IC 35-50-6, a person does not earn credit time while serving a five (5) day sentence under subsection (b).

SECTION 22. IC 35-50-2-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 9. (a) The state may seek either a death sentence or a sentence of life imprisonment without parole for murder by alleging, on a page separate from the rest of the charging instrument, the existence of at least one (1) of the aggravating circumstances listed in subsection (b). In the sentencing hearing after a person is convicted of murder, the state must prove beyond a reasonable doubt the existence of at least one (1) of the aggravating circumstances alleged. However, the state may not proceed against a defendant under this section if a court determines at a pretrial hearing under IC 35-36-9 that the defendant is a mentally retarded individual.

(b) The aggravating circumstances are as follows:

(1) The defendant committed the murder by intentionally killing the victim while committing or attempting to commit any of the following:

(A) Arson (IC 35-43-1-1).

(B) Burglary (IC 35-43-2-1).

(C) Child molesting (IC 35-42-4-3).

(D) Criminal deviate conduct (IC 35-42-4-2).

(E) Kidnapping (IC 35-42-3-2).

(F) Rape (IC 35-42-4-1).

(G) Robbery (IC 35-42-5-1).

(H) Carjacking (IC 35-42-5-2).

(I) Criminal gang activity (IC 35-45-9-3).

(J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).

(2) The defendant committed the murder by the unlawful detonation of an explosive with intent to injure person or damage property.

(3) The defendant committed the murder by lying in wait.

(4) The defendant who committed the murder was hired to kill.

(5) The defendant committed the murder by hiring another person to kill.

(6) The victim of the murder was a corrections employee, probation officer, parole officer, community corrections worker, home detention officer, fireman, judge, or law enforcement officer, and either:

(A) the victim was acting in the course of duty; or

(B) the murder was motivated by an act the victim performed while acting in the course of duty.

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(7) The defendant has been convicted of another murder.

(8) The defendant has committed another murder, at any time, regardless of whether the defendant has been convicted of that other murder.

(9) The defendant was:

(A) under the custody of the department of correction;

(B) under the custody of a county sheriff;

(C) on probation after receiving a sentence for the commission of a felony; or

(D) on parole;

at the time the murder was committed.

(10) The defendant dismembered the victim.

(11) The defendant burned, mutilated, or tortured the victim while the victim was alive.

(12) The victim of the murder was less than twelve (12) years of age.

(13) The victim was a victim of any of the following offenses for which the defendant was convicted:

(A) Battery as a Class D felony or as a Class C felony under IC 35-42-2-1.

(B) Kidnapping (IC 35-42-3-2).

(C) Criminal confinement (IC 35-42-3-3).

(D) A sex crime under IC 35-42-4.

(14) The victim of the murder was listed by the state or known by the defendant to be a witness against the defendant and the defendant committed the murder with the intent to prevent the person from testifying.

(15) The defendant committed the murder by intentionally discharging a firearm (as defined in IC 35-47-1-5):

(A) into an inhabited dwelling; or

(B) from a vehicle.

(16) The victim of the murder was pregnant and the murder resulted in the intentional killing of a fetus that has attained viability (as defined in IC 16-18-2-365).

(17) The defendant committed a murder that was motivated by bias.

(c) The mitigating circumstances that may be considered under this section are as follows:

(1) The defendant has no significant history of prior criminal conduct.

(2) The defendant was under the influence of extreme mental or emotional disturbance when the murder was committed.

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(3) The victim was a participant in or consented to the defendant's conduct.

(4) The defendant was an accomplice in a murder committed by another person, and the defendant's participation was relatively minor.

(5) The defendant acted under the substantial domination of another person.

(6) The defendant's capacity to appreciate the criminality of the defendant's conduct or to conform that conduct to the requirements of law was substantially impaired as a result of mental disease or defect or of intoxication.

(7) The defendant was less than eighteen (18) years of age at the time the murder was committed.

(8) Any other circumstances appropriate for consideration.

(d) If the defendant was convicted of murder in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing. The jury or the court may consider all the evidence introduced at the trial stage of the proceedings, together with new evidence presented at the sentencing hearing. The court shall instruct the jury concerning the statutory penalties for murder and any other offenses for which the defendant was convicted, the potential for consecutive or concurrent sentencing, and the availability of good time credit and clemency. The defendant may present any additional evidence relevant to:

(1) the aggravating circumstances alleged; or

(2) any of the mitigating circumstances listed in subsection (c).

(e) Except as provided by IC 35-36-9, if the hearing is by jury, the jury shall recommend to the court whether the death penalty or life imprisonment without parole, or neither, should be imposed. The jury may recommend:

(1) the death penalty; or

(2) life imprisonment without parole;

only if it makes the findings described in subsection (k). The court shall make the final determination of the sentence, after considering the jury's recommendation, and the sentence shall be based on the same standards that the jury was required to consider. The court is not bound by the jury's recommendation. In making the final determination of the sentence after receiving the jury's recommendation, the court may receive evidence of the crime's impact on members of the victim's family.

(f) If a jury is unable to agree on a sentence recommendation after

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reasonable deliberations, the court shall discharge the jury and proceed as if the hearing had been to the court alone.

(g) If the hearing is to the court alone, except as provided by IC 35-36-9, the court shall:

(1) sentence the defendant to death; or

(2) impose a term of life imprisonment without parole; only if it makes the findings described in subsection (k).

(h) If a court sentences a defendant to death, the court shall order the defendant's execution to be carried out not later than one (1) year and one (1) day after the date the defendant was convicted. The supreme court has exclusive jurisdiction to stay the execution of a death sentence. If the supreme court stays the execution of a death sentence, the supreme court shall order a new date for the defendant's execution.

(i) If a person sentenced to death by a court files a petition for post-conviction relief, the court, not later than ninety (90) days after the date the petition is filed, shall set a date to hold a hearing to consider the petition. If a court does not, within the ninety (90) day period, set the date to hold the hearing to consider the petition, the court's failure to set the hearing date is not a basis for additional post-conviction relief. The attorney general shall answer the petition for post-conviction relief on behalf of the state. At the request of the attorney general, a prosecuting attorney shall assist the attorney general. The court shall enter written findings of fact and conclusions of law concerning the petition not later than ninety (90) days after the date the hearing concludes. However, if the court determines that the petition is without merit, the court may dismiss the petition within ninety (90) days without conducting a hearing under this subsection.

(j) A death sentence is subject to automatic review by the supreme court. The review, which shall be heard under rules adopted by the supreme court, shall be given priority over all other cases. The supreme court's review must take into consideration all claims that the:

(1) conviction or sentence was in violation of the:

(A) Constitution of the State of Indiana; or

(B) Constitution of the United States;

(2) sentencing court was without jurisdiction to impose a sentence; and

(3) sentence:

(A) exceeds the maximum sentence authorized by law; or

(B) is otherwise erroneous.

If the supreme court cannot complete its review by the date set by the sentencing court for the defendant's execution under subsection (h), the



1 supreme court shall stay the execution of the death sentence and set a
2 new date to carry out the defendant's execution.

3 (k) Before a sentence may be imposed under this section, the jury,
4 in a proceeding under subsection (e), or the court, in a proceeding
5 under subsection (g), must find that:

6 (1) the state has proved beyond a reasonable doubt that at least
7 one (1) of the aggravating circumstances listed in subsection (b)
8 exists; and

9 (2) any mitigating circumstances that exist are outweighed by the
10 aggravating circumstance or circumstances.

11 **SECTION 23. [EFFECTIVE JULY 1, 1999] The amendments to**
12 **IC 35 by this act apply only to offenses committed after June 30,**
13 **1999.**

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